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REMARKS

I. Introduction

This is in response to the Office Action dated November 3, 2006. In that Office Action, the Examiner allowed Claims 1-4, 8, and 10-16, objected to Claims 7 and 16, and rejected Claims 5, 6, and 9.

With regard to Claims 7 and 16, the Examiner indicated in paragraph 4 of the Office Action that these claims would be allowable if rewritten in independent form. The above amendment writes these claims in independent form and thus the only claims left at issue are Claims 5, 6, and 9. As to these claims, applicant continues to believe that the Examiner's rejection is unfounded and should be withdrawn. The reasons for that belief are set forth below.

II. The Dryon Patent Does Not Disclose the Ribbon of Claim 5

In applicant's September 1, 2006 Response, applicant argued that:

[I]t is absolutely clear that as a result of passing through Dryon's sheet breaking arrangement, glass sheet 21 is consumed and replaced by the cut up masses of glass 37.

Applicant's Claim 5 requires a ribbon that moves continually before, during, and after (a), (b), and (c). Put simply, Dryon's sheet 21 cannot be such a ribbon since the sheet no longer exists at the end of Dryon's process.
(9/1/06 Response at page 4; emphasis in original.)

In the November 3rd Office Action, the Examiner argued that:

The Applicant argues that element 21 is not a ribbon since element 21 no longer exists at the end of the process and it does not move continuously before, during and after steps (a), (b), and (c). This argument is not persuasive.

After the first pane 37 is removed from the ribbon 21, the ribbon 21 still exists. Therefore, the Applicant's argument is not persuasive. (11/3/06 Office Action at page 3.)

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Applicant respectfully submits that the Examiner is taking an artificial view of Dryon. Dryon's goal is to take an individual sheet of glass, i.e., reference number 21, and subdivide it into "masses of glass," i.e., reference number 37. At the end of Dryon's process, sheet 21 no longer exists -- a fact that the Examiner has not and cannot contest.

The Examiner argues that "[a]fter the first pane 37 is removed from the ribbon 21, the ribbon 21 still exists." In making this argument, the Examiner has ignored what happens when the next to the last pane is removed. At that point, all that exists are "masses of glass" -- sheet 21 is completely gone. Moreover, if sheet 21 is only to be divided into two panes, then the sheet disappears immediately as soon as the first pane is removed. The artificial nature of the Examiner's reading of Dryon is evident from these considerations. Put simply, applicant's Claim 5 calls for a continually moving ribbon, not a ribbon which is present only part of the time and then disappears, which is the plain result of the Examiner's artificial application of the term "ribbon" to Dryon.

However, to expedite the prosecution of this application, applicant has amended Claim 5 to further characterize the ribbon from which panes are separated in applicant's process. The following is a copy of applicant's Figure 4 which provides support for the applicant's amended claim:

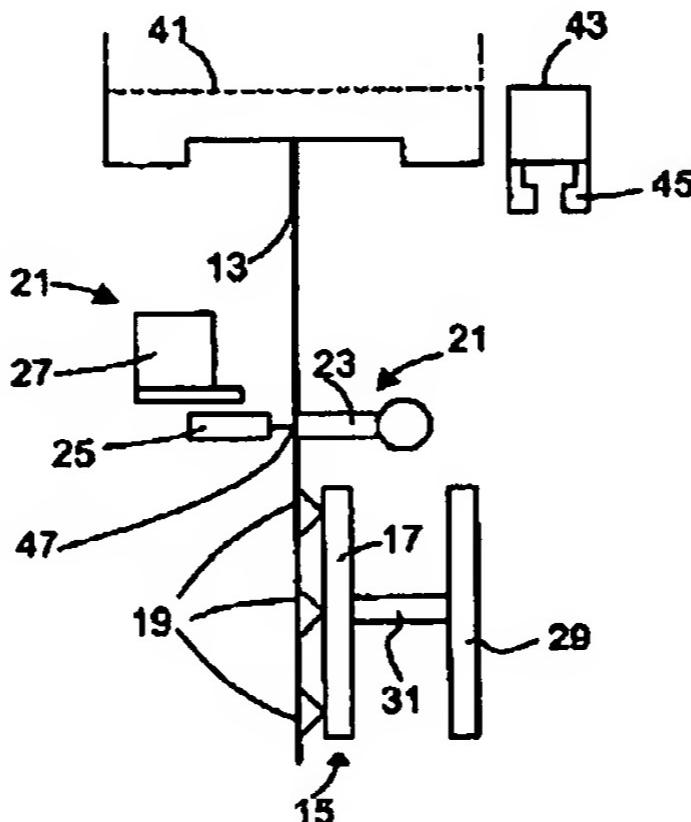
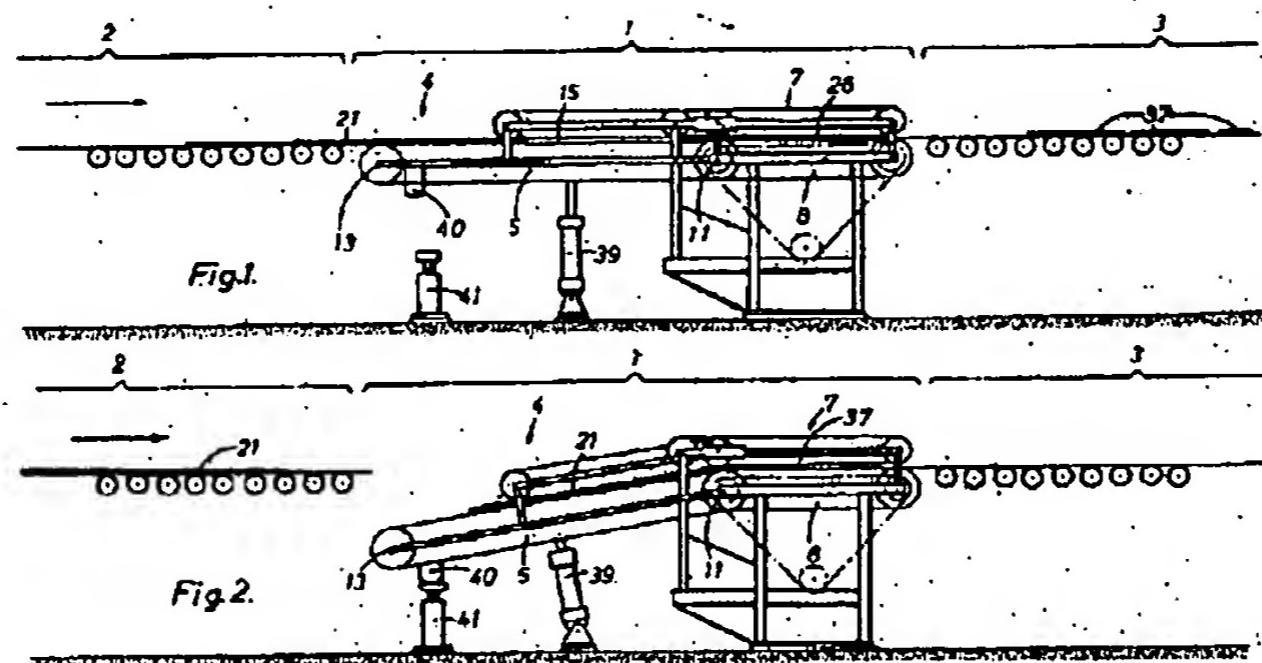


FIG. 4

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As shown in this figure, ribbon 13 is continuously produced by a manufacturing line 41 and when releasably engaged in step (a) of applicant's process, the ribbon extends from and is connected to the manufacturing line. In contrast, although Dryon does not show the manufacturing line where his sheets 21 are produced, wherever that line may be, Dryon's sheet 21 cannot be connected to and extend from the line since if it did, Dryon could not rotate conveyor 5 about spindle 11 as shown in Dryon's Figures 1 and 2 without destroying sheet 21:



Accordingly, applicant respectfully submits that with this amendment there can be no question that Dryon does not disclose a ribbon as that term is used in Claim 5.

III. The Amendments to Applicant's Claims Should Be Entered

37 CFR §1.116(b)(3) provides:

An amendment touching the merits of the application ...
may be admitted upon a showing of good and sufficient
reasons why the amendment is necessary and was not
earlier presented.

Applicant believes that this provision is applicable with regard to the above amendments to the claims of this application and, in particular, is applicable to the amendments to Claim 5. Alternatively, applicant believes that the finality of the November 3rd Office Action should be reconsidered and withdrawn.¹

¹ Both boxes 2a and 2b are marked on the first page of the November 3rd Office Action, i.e., the Office Action is marked as being both final and non-final. However, paragraph 6 of the Office Action states that the "action is made final" and PAIR lists the Office Action as final. Accordingly, applicant has treated the November 3rd Office Action as a final Office Action.

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The limitation of Claim 5 which requires that the "ribbon moves continually before, during, and after (a), (b), and (c)" was introduced into Claim 5 in a March 30, 2006 Amendment After Final Rejection which applicant submitted in response to a January 30, 2006 final Office Action (the January 30th Final Office Action). In response to applicant's Amendment After Final Rejection, the Examiner issued an April 11, 2006 Advisory Action in which he indicated that "[w]ith respect to claim 5, a new search for moving the ribbon continuously before, during and after claimed steps (a), (b) and (c) instead of continuously during each claimed step is needed." The Advisory Action indicated that the March 30th Amendment After Final Rejection would not be entered.

To have that amendment considered and to give the Examiner an opportunity to perform the new search referred to in the Advisory Action, applicant filed an RCE on April 19, 2006. Thereafter, on June 2, 2006, the Examiner issued a non-final Office Action for this application. No new art was cited in that Office Action. Rather, Claim 5 was rejected based on Dryon using exactly the same words that had been used in the January 30th Final Office Action. Not one word was included in the June 2nd Office Action regarding the limitation to Claim 5 which had been added by applicant's March 30th Amendment After Final Rejection, i.e., the limitation that requires that the "ribbon moves continually before, during, and after (a), (b), and (c)." Accordingly, applicant had no idea on what basis the Examiner believed that this limitation was satisfied by Dryon.

Applicant responded to the June 2nd Office Action by noting, among other things, that "the Examiner did not point to any part of the Dryon patent as disclosing a ribbon which 'moves continually before, during, and after (a), (b), and (c).' " (9/1/06 Response at page 2.) No amendments were made to applicant's claims since applicant had no insight into the Examiner's thinking and thus no reason to make an amendment.

The Examiner responded to applicant's September 1, 2006 Response by issuing the November 3rd final Office Action which is the subject of this amendment. In addition to the above quoted portions of the Office Action regarding the Examiner's

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view that Dryon has a ribbon, the Examiner also for the first time set forth his views regarding how Dryon allegedly satisfies the limitation that requires that the "ribbon moves continually before, during, and after (a), (b), and (c)":

Dryon clearly teaches the ribbon 21 moving continuously before, during and after steps (a), (b), and (c). As shown in Fig. 3, the ribbon 21 is moving when the first pane 37 is engaged by the belts (8 and 9). Therefore, Dryon anticipates step (a). As the first pane 37 is separated from the ribbon 21 at the spindle 11 and the belts (8 and 9), the conveyors (5 and 6) continuously feed the ribbon into the spindle 11 and the belts (8 and 9). Therefore, Dryon anticipates step (b). After the first pane 37 is separated and moved out, the conveyors (5 and 6) continuously feed the ribbon into the spindle 11 and the belts (8 and 9) for separating the second pane from the ribbon. Therefore, Dryon anticipates step (c).²

Applicant respectfully submits that it is unfair for the Examiner to have issued his June 2nd Office Action without any discussion of the limitation that requires that the "ribbon moves continually before, during, and after (a), (b), and (c)" and then, for the first time, to include such a discussion in a final Office Action, i.e., the November 3rd Final Office Action. Plainly, in responding to the June 2nd Office Action, applicant could not have contested a position he was not aware of.

Under these circumstances, applicant respectfully submits that the Examiner should either withdraw the finality of the November 3rd Office Action or enter the above amendments pursuant to 37 CFR §1.116(b)(3) so that this application will be in condition for allowance or in better condition for appeal should such action be necessary.

² Applicant does not agree with this characterization of Dryon but in view of the other distinctions between Claim 5 and Dryon discussed above a detailed critique of the Examiner's assertions is not believed necessary at this time.

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IV. Conclusion

Applicant believes that the above comments and amendments put this application in condition for allowance and such action is respectfully requested. Alternatively, applicant requests that the Examiner either enter this amendment for purposes of appeal or issue another Office Action if the Examiner believes that further prosecution of this application is still needed to narrow the issue in dispute.

Respectfully submitted,

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Maurice Klee

Maurice M. Klee, Ph.D.
Reg. No. 30,399
Attorney for Applicant
1951 Burr Street
Fairfield, CT 06824
(203) 255-1400